

SCHOOL-TO-WORK WORK-BASED LEARNING LEGAL & LABOR ISSUES



FAIR LABOR STANDARDS ACT (FLSA)

From its inception in the 1930's, the federal Fair Labor Standards Act has protected the rights, safety and well-being of most workers in the United States including youth. With the passage of the School-to-Work Opportunities Act in 1994, questions have arisen concerning whether a student's work-based learning experience is covered under the Fair Labor Standards Act.

School-to-Work initiatives cover a wide range of activities, some of which are subject to FLSA and some of which are not. FLSA specifies particular limits on the employment of minors under the age of 18. Under the School-to-Work Opportunities Act, no waivers of FLSA are permitted. However, participation in a School-to-Work initiative carries *no additional* compliance obligations under FLSA; working with School-to-Work students is just like working with other minors.

What is Work-Based Learning under School-to-Work?

Work-based learning – a learning experience for a student at an employer's worksite – is one of the three core elements of School-to-Work systems, along with school-based learning and connecting activities. It includes work experience (both paid and unpaid), workplace mentoring, and broad instruction, to the extent practicable, in all aspects of an industry. Instruction in general workplace competencies – including developing positive work attitudes, employability, and participative skills – is also part of the work-based learning component.

What does the Fair Labor Standards Act cover?

FLSA covers wages, hours and overtime, compliance with child labor laws and record keeping requirements. Generally, FLSA applies to students in PAID work experience.

When are Work-Based Learning experiences not subject to FLSA?

Activities such as workplace mentoring, job shadowing, field trips, career awareness and unpaid "volunteer" work experience are not subject to FLSA.

What are the FLSA requirements?

Students in a paid work experience must receive at least federal minimum wage of \$5¹⁵ per hour. They must be paid overtime pay of 1½ times the agreed rate of pay for all time in excess of 40 hours per week. Employers must keep adequate records and comply with child labor laws.

What are the elements of a worksite learning experience?

A School-to-Work learning experience at an employer's worksite:

- ??Is a planned program of job training and work experience for the student
- ??Encompasses a sequence of activities that build one upon the other
- ??Is structured to expose the student to all aspects of an industry
- ??Provides for real or simulated tasks or assignments.

When is a work-based learning work experience not employment?

A student enrolled in a School-to-Work work-based learning work experience would not be considered an employee for FLSA purposes if **ALL** of the following criteria were met:

- ??The student receives ongoing instruction at the employer's worksite and receives close on-site supervision throughout the learning experience, with the result that any productive work performed by the student would be offset by the burden to the employer from the training and supervision provided; and
- ??The placement of the student at a worksite during the learning experience does not result in the displacement of any regular employee – i.e., the presence of the student at the worksite cannot result in an employee being laid off, cannot result in the employer not hiring an employee it would otherwise hire, and cannot result in an employee working fewer hours than he or she would otherwise work; and
- ??The student is not entitled to a job at the completion of the learning experience – but this does not mean that employers are to be discouraged from offering employment to students who successfully complete the training; and
- ??The employer, student, and parent or guardian understand that the student is not entitled to wages or other compensation for the time spent in the learning experience – although the student may be paid a stipend for expenses such as books and tools.

What does it mean if a work-based experience is not subject to FLSA?

It means that a student is not an employee, wages are not paid, and Federal child labor laws do not apply. Payment of a stipend is optional and is generally limited to reimbursement for expenses such as books, tuition, or tools. There are no specific stipulations for the length of the learning experience, as long as the four criteria listed above apply to the student's participation.

While federal child labor laws do not apply if there is not an employment relationship, School-to-Work systems are encouraged to adhere to child labor laws with regard to hazardous working conditions. Child labor laws provide guidance that can assist School-to-Work participants in determining hazardous jobs or working conditions for students. (See companion paper on Child Labor Laws).

Whom can we contact for assistance on FLSA?

MONTANA DEPARTMENT OF LABOR & INDUSTRY
WAGE AND HOUR UNIT
PO BOX 6518
HELENA MT 59604-6518

Phone: 406 444 5600

US DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE – HOUR DIVISION
FEDERAL BUILDING, ROOM 800
525 GRIFFIN STREET
DALLAS TEXAS 75202

Phone: 212 767 6897

SCHOOL-TO-WORK WORK-BASED LEARNING LEGAL & LABOR ISSUES



MONTANA'S CHILD LABOR LAW

(From 1997 Reference Guide printed by DLI/Wage & Hour Unit)

INTRODUCTION

This summary on the Montana Child Labor Standard Act provides general information only and should not be considered as an official document. Official statements of policy and procedure are contained in the administrative rules formally adopted by the Wage and Hour Unit of the Montana Department of Labor and Industry.

Montana Codes Annotated – Title 41, Chapter 2

“Declaration of Policy. It is declared to be the policy of this Act to protect young workers from employment that might interfere with their educational opportunities or be detrimental to their health or well-being.”

General provisions of the child labor laws

The Montana Child Labor Standards Act establishes the hours children may work and the hazardous occupations in which they may not work – unless specifically exempted.

The Montana Child Labor Laws apply to all children, migrant as well as resident children. These laws parallel, but do not supersede the federal child labor laws. The federal law is similar to Montana law but is more restrictive in certain areas.

COMMON TERMS

Minor, an individual under 18 years of age, except for an individual who:

- (a) Has received a high school diploma or passing score on the GED
- (b) Is 16 years of age or older and is enrolled in a registered state or federal apprenticeship program.

Hazardous occupations, nonagricultural occupations which have been declared to be particularly hazardous, involving risk, or detrimental to the health and well-being of individuals under 18 years of age.

For a complete listing of hazardous occupations and machinery, contact the Wage and Hour Unit, 406 444 5600.

PROHIBITED EMPLOYMENT

Minors under age 14 may not be employed in or in connection with an occupation except as is provided by law. For information on exempt employment for 14 and under minors, contact Wage & Hour at 406 444 5600.

Minors age 14 or 15 may not work in:

Nonagricultural jobs – involving manufacturing, mining, most processing work, hazardous occupations; operating or tending most power-driven machinery; public messenger service; work connected with warehousing, storage, transportation, communications, public utilities, and construction (except office and sales jobs not performed on vehicles or construction sites).

Agricultural jobs – involving felling, bucking, skidding, loading or unloading timber with a butt diameter of more than nine inches; repairing a building from a ladder or scaffold at a height of more than twenty feet; working inside a fruit, forage or grain storage structure designed to retain an oxygen deficient or toxic atmosphere; working inside a silo within two weeks after silage has been added or when a top loading device is in operating position; handling or using a blasting agent including but not limited to dynamite, black powder, sensitized ammonium nitrate, blasting caps or primer cord; or transferring or applying anhydrous ammonia.

Exemptions from some of the hazardous agricultural occupations apply for 14- and 15-year-old student learners enrolled in vocational agriculture programs when certain requirements are met. Minors aged 14 and 15 who hold certificates of completion of training under a 4-H or vocational agriculture training program may work outside school hours on equipment for which they have been trained.

Minors age 16 or 17: Unless working as an apprentice or student learner under §41-2-110 MCA, a minor 16 or 17 year of age may not be employed in or in connection with hazardous occupations.

WORKING HOURS FOR MINORS

Unless otherwise exempt, a minor who is 14 or 15 years of age may NOT be employed:

- during school hours, except as provided for in Work Experience and Career Exploration Programs approved by the Department or the Office of Public Instruction.
- before 7 a.m. or after 7 p.m., except that the minor may be employed until 9 p.m. during periods outside the school year (June 1 through Labor Day, depending on local standards); or
- employed more than 3 hours on a school day;
- 18 hours in a school week;
- 8 hours in a non-school day; or
- 40 hours in a week in a non-school week

ASSISTANCE

Inquiries about the Montana Child Labor Standards Act, Minimum Wage laws and other Montana labor laws and their applications will be answered by mail, telephone or personal interview at the:

DEPARTMENT OF LABOR AND INDUSTRY
WAGE AND HOUR UNIT
PO BOX 6518
HELENA MT 59604-6518

Phone: 406 444 5600

SCHOOL-TO-WORK WORK-BASED LEARNING LEGAL & LABOR ISSUES



WORKERS' COMPENSATION

This fact sheet provides the necessary information to make sure that all students, as well as employers and schools are protected and in compliance with workers' compensation laws.

The workers' compensation law and School-to-Work...

The State Legislature passed a law in 1997 clarifying the workers' compensation act coverage requirements for students who participate in work-based learning activities. This law explicitly includes elementary students, and defines the terms "business partner" and "work-based learning activities."

A business partner is defined as "the community, government entity, or business organization that provides the premises for work-based activities for students."

Work-based learning activities are defined as "job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary or postsecondary educational institution."

So, do School-to-Work students need workers' compensation coverage or not?

As before, if the business partner or the school chooses to pay the student a wage, then the business partner or school must provide workers' compensation for the student just as for any other employee. If the student is not paid a wage, he or she is classified as a volunteer. In the case of a volunteer, the business partner or the educational institution may elect to provide workers' compensation coverage for the student. However, workers' compensation coverage is not required by law on volunteers. The best alternative is for the business partner and the educational institution to work together to ensure that they and the student are protected in case there is an accident.

Who is responsible for paying for workers' compensation for paid School-to-Work students?

The entity paying the student's wage is, as for all employees, responsible for providing workers' compensation. So, either the business partner or the school, depending on which entity pays the student, will be responsible for providing workers' compensation coverage. The responsible party will also receive the right of "exclusive remedy", that is, protection from a lawsuit if there is an injury or accident.

What about workers' compensation for students who are classified as "volunteers"?

In the case of unpaid School-to-Work students, either the school or the business partner may elect to pay workers' compensation coverage, but law requires neither entity to provide coverage for students in unpaid work-based learning experiences.

Seven suggestions to schools for minimizing workers' compensation problems with students...

1. Visit the job site and work areas where the student will be working. Look at the place from a safety perspective. Does the place look unsafe or like it contains hazards that students should not be around? If so, don't place a student there, no matter how good the opportunity might look.

2. Consider whether the work is appropriate for the individual student. Besides taking the student's skills and knowledge into consideration, think about whether child labor laws might prohibit the student from doing that work.
3. Verify that the business partner has insurance coverage for (1) public liability and (2) workers' compensation. Get a "certificate of insurance" from the employer issued by their insurance company for each type of coverage.
4. Enter into a written agreement with the business partner concerning the relationship and spell out who is responsible for what. Make sure everybody involved (the school, the student and his or her parents, and the business partner) know what the student will be doing. It may be appropriate also to specify certain things that the student will not be doing, depending on the type of work. Make sure that any "on-the-job" injuries are reported immediately to the School-to-Work teacher or administrator. That's part of the "real world" job experience, too.
5. Do follow-up with the student and the business partner to make sure that everybody is doing what he or she promised to do. It does not do any good to have a written agreement when somebody promises that they will do "a" and then they turn around and do "b". It may be desirable to get independent verification from both the student and the business partner. Having the student write progress notes may be suitable (and desirable) for some types of work, but not for others.
6. Cover the student as a "volunteer" under the school's workers' compensations policy.
7. Document all of the above. Use a checklist so things aren't forgotten. The documentation can be made into a "personnel file" for each School-to-Work student.

"The above suggestions are intended as practical guidelines only. They do not constitute legal advice nor should they serve as a substitute for sound judgement. Use of these suggestions does not guarantee that problems will not arise or that particular outcomes will occur." Montana Department of Labor and Industry.